



POLICE DEPARTMENT

February 11, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Edison Gutierrez
Tax Registry No. 932763
108 Precinct
Disciplinary Case No. 2013-10949

A conference was held before the undersigned on the above-referenced case on January 13, 2015. Respondent is charged as follows:

1. Said Lieutenant Edison Gutierrez, while holding the rank of Sergeant and assigned to the 34th Precinct, while on-duty assigned as the Patrol Supervisor, on or about November 12, 2012, did fail and neglect to prepare a Complaint Report Worksheet upon responding to a complaint of a Robbery and speaking to the complainant.

Operations Order No. 5 of 2012, Page 1, Paragraph 2(a) – PROPER
PRELIMINARY INVESTIGATIONS OF COMPLAINTS

P.G. 207-07, Page 1, Paragraph 3 – PRELIMINARY INVESTIGATION OF
COMPLAINTS

2. Said Lieutenant Edison Gutierrez, while holding the rank of Sergeant and assigned to the 34th Precinct, while on-duty assigned as the Patrol Supervisor, on or about November 12, 2012, did fail and neglect to properly supervise his subordinates by failing to instruct them to take a complaint of a Robbery after speaking to a complainant.

P.G. 202-17, Page 1, Paragraph 11 – PATROL SUPERVISOR – DUTIES AND
RESPONSIBILITIES

The Department was represented by Jordan Farnham, Esq., Department
Advocate's Office. Respondent was represented by James Moschella, Esq.

MOTION TO DISMISS

The Department Advocate moved to dismiss the charges.

DISCUSSION

This report and recommendation is based upon a review of the Department Advocate's (the Advocate) Case Analysis and Recommendation Memoranda along with statements made by the Advocate on the record regarding this matter.

According to the Advocate, these charges were brought based on an audit of 34 Precinct records that was conducted by the Internal Affairs Bureau's Quality Assurance Division (QAD) in which QAD auditors compared SPRINT reports with completed Complaint Reports for crimes such as burglary and robbery.

QAD auditors discovered a SPRINT report which indicated that on November 12, 2012, a woman had telephoned 911 to report that her purse had just been forcibly taken from her at gunpoint inside a parking garage at West 193 Street and Broadway, Manhattan, which is located within the confines of the 34 Precinct. However, QAD auditors did not find a corresponding Complaint Report for robbery on file at the 34 Precinct. In an attempt to identify and interview the woman who had called 911, QAD investigators repeatedly called the number of the telephone that been used to call 911 but this phone number had been disconnected.

Since the SPRINT report indicated that Police Officers Eddie Rivera and Bianca Trujillo, assigned to the 34 Precinct, had responded to the 911 call, Rivera and Trujillo were interviewed and their Activity Log entries for November 12, 2012 were examined. Neither Rivera nor Trujillo had any independent recollection of having responded to West 193 Street and Broadway, Manhattan, on November 12, 2012, or speaking to a

complainant there. However, Rivera's Activity Log indicated that on November 12, 2012, he responded to a "10-30" at 1610 hours in the area of West 193 Street and Broadway and that he entered a disposition of "10-90Y" (Unnecessary). Rivera's Activity Log also showed that Respondent had "scratched" his Activity Log just before the "job" was finalized at 1635 hours.

Trujillo's Activity Log indicated that on November 12, 2012, she responded to a "10-30" at West 193 Street and Broadway that was finalized with a disposition of "10-90Y." Trujillo's Activity Log was also "scratched" by Respondent. Trujillo told her interviewers that she was aware that under Operations Order No. 5 of 2012, officers who respond to a crime scene must prepare a Complaint Report even if the complainant does not want to cooperate.

On September 12, 2013, Respondent was interviewed pursuant to Patrol Guide Procedure 206-13 and his Activity Log entries for November 12, 2012 were examined. Respondent had no independent recollection of having responded to West 193 Street and Broadway, Manhattan, on November 12, 2012. Respondent's Activity Log indicated that on November 12, 2012, he was assigned as the 34 Precinct Patrol Supervisor and that at 1610 hours he responded to a "10-30" call at West 193 Street and Broadway. Respondent told his interviewers that he was not familiar with the guidelines contained in Operations Order No. 5 of 2012. Respondent also told his interviewers that he had often responded to 911 calls in which the caller had alleged that a crime had taken place only to discover upon arriving at the scene that no crime had taken place.

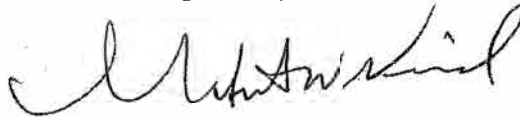
The Advocate stated that, based on the above facts, there is insufficient evidence to establish that the complainant was even present when Respondent arrived at West 193

Street and Broadway, much less that Respondent spoke to the complainant. Thus, the Department cannot prove that Respondent failed and neglected to prepare a Complaint Report Worksheet upon responding to a complaint of a robbery and speaking to the complainant.

The Advocate further stated that based on the above facts there is insufficient evidence to establish that Respondent failed and neglected to properly supervise Rivera or Trujillo by failing to instruct them to take a complaint of a robbery after speaking to a complainant since the Department cannot prove that Rivera or Trujillo communicated to Respondent that they had spoken to a complainant.

Therefore, it is recommended that the Advocate's motion to dismiss these charges be granted.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

FEB 26 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER